

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-211189.3**DATE:** August 23, 1983**MATTER OF:** Tilden-Coil Constructors, Inc.**DIGEST:**

GAO will not object to cancellation of advertised solicitation for the construction of two buildings and incorporation of the requirement for the buildings into an ongoing construction contract through negotiated modification of the current contract where notwithstanding fact that the contract as modified exceeds the scope of the original competition, and is tantamount to a sole-source award, the record shows that adequate justification existed to authorize a sole-source award.

Tilden-Coil Constructors, Inc. (TCC), protests the United States Army Corps of Engineers (Army) decision to cancel an advertised solicitation for the construction of two buildings (a mess hall and an administrative building) and instead negotiate the modification of a current ongoing contract (No. DACA09-83-C-0034) for the construction of eight buildings and a central energy plant at Fort Irwin, California. Under the negotiated modification, the two additional buildings are valued at \$4,532,000 while the current contract is valued at \$12,452,000. TCC urges that the two additional buildings should have been acquired through competitive bidding.

We deny the protest.

We generally do not review protests concerning contract modifications as they involve contract administration which is primarily the responsibility of the contracting agency. Sierra Pacific Airlines, B-205439, July 19, 1982, 82-2 CPD 54. However, we make an exception where the basis of the protest is that the contract, as modified, exceeds the scope of the original contract since such a modification, in

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lieu of a competitive procurement, may be tantamount to an inadequately justified sole-source procurement. See National Data Corporation, B-207340, September 13, 1982, 82-2 CPD 222. The propriety of the modification is determined by ascertaining whether the modification materially altered the contract to such an extent that the competition for the contract as modified would be significantly different from the competition originally obtained. American Air Filter Co.--DLA Request for Reconsideration, 57 Comp. Gen. 567 (1978), 78-1 CPD 443. A modification falls within the scope of the original competition if potential offerors could reasonably have anticipated it under the changes clause of the original contract. American Air Filter Co.--DLA Request for Reconsideration, supra. If it is determined that the modification exceeds that standard, the modification is tantamount to a sole-source award under a new procurement. The issue then becomes whether a sole-source award was appropriate.

The record shows that the modification calls for two additional buildings over the eight currently under construction at an additional cost of approximately \$4.5 million. The magnitude of the modification is, in our view, clearly beyond that which would reasonably be anticipated under the changes clause. It is, therefore, tantamount to a sole-source award under a new procurement.

Under the facts and circumstances outlined in the record now before us, we find that a sole-source award is appropriate. A sole-source award is authorized when it is required by the legitimate needs of the Government. See International Business Machines Corporation, B-198094.3, September 29, 1981, 81-2 CPD 258.

The Army reports that the work called for in the modification:

* * * is interrelated to the work currently being performed under the aforementioned contract with respect to access to the site, installation of utilities, sidewalks, curbs and gutters, grading of the site to insure adequate drainage, and staging areas for the contractor's equipment and building materials. Physical crowding of the congested

work site by another contractor would result in a significant loss of efficiency. Concurrent construction of the Central Energy Plant under the current contract and also of the Dining Facility under the * * * [modification] will be required even though the facilities have only ten feet of clearance between them. Completion of the Central Energy Plant in a timely manner is critical since it must be completed prior to all other facilities on the site because it will provide the source and distribution of utilities to all other facilities on the site. Adverse impacts relating both to additional costs and delayed completion dates are expected to be incurred should another contractor other than the Metric Construction Company perform the work for the Dining Facility and the Administration and Supply Facility. Future construction requirements at Fort Irwin hinge on the timely completion of both the work currently being performed under the current contract and also the work scheduled to be performed under the * * * [modification]. Delay experienced on either project would have a detrimental ripple effect upon operations at Fort Irwin."

TCC's response to the Army's position is to give an example of a local county project which currently has more than one general contractor and has bids outstanding for more work which could result in other general contractors being involved. We do not find that this general example shows the Army's detailed position to be unreasonable.

Accordingly, the protest is denied.

Harry R. Van Cleave
for Comptroller General
of the United States